

## Section 4.2

### CONSULTANT CEI ACCOUNTABILITY

#### 4.2.1 Purpose

To establish procedures for the assignment of responsibilities when a Consultant Construction Engineering and Inspection (CCEI) has been determined to have performed work for the Department that has been identified as having errors, omissions, or contractual ~~breaches~~ lapses. This procedure is for use by the Department to document the deficiency and the additional costs and damages sustained and establish the requirement for a recommendation for action against the Consultant.

The identification of errors and/or omissions as a result of incorrect final estimate shall be in accordance with the Review and Administration Manual, Procedure No. 700-050-005, Scope of Services, and Certification of Final Estimates by Consultants.

#### 4.2.2 Authority

Sections 334.048 and 337.015, Florida Statutes (F.S.)

Section 20.23(4)(a) Florida Statutes (FS)

FHWA Approved: ~~April 27, 2004~~ xx-xx-xx

#### ~~4.2.3~~ 4.2.2 Background

Throughout the construction phase of the Department's construction contract under the management of a Consultant CEI, quality assurance reviews are performed. Reviews performed by both the District Construction Engineer's staff and the State Construction Office staff, as well as reviews performed by the FHWA, are intended to determine whether the work performed on the project is of an acceptable level of quality as established in the contract documents for the project.

There have been instances in the past whereby Consultant CEI firms, ~~due to various circumstances or incapability,~~ have not performed in full conformity with the Consultant Contract. These instances have at times cost the Department, either through additional work paid to the construction Contractor or through remedial costs to correct defective work in the contract administration or documentation.

This procedure outlines the assessment of responsibility that the Department's Construction Project Manager in charge of the [Consultant](#) CEI Contract must complete after reviewing the project performance.

#### ~~4.2.4~~ [4.2.3](#) Definitions

~~**Specialty Engineer:** The Department representative of the State Construction Engineer.~~

**Construction Project Manager:** The Department representative working for the Department Resident Engineer or the District Construction Consultant Manager who manages one or more Consultant CEI contract(s).

**Consultant CEI:** A consulting engineering firm pre-qualified by the Department to perform Construction Engineering and Inspection (CEI) and under contract to perform such services on a project or series of projects.

**Consultant Inspector:** The Consultant's technical field personnel assigned to a particular aspect of the inspection process.

**Consultant Principal-in-Charge:** That person designated by the consulting firm under contract who, as a corporate officer or principal in that firm, serves as the person in responsible charge of the management of the contract on the firm's behalf.

**Consultant Project Administrator:** The Consultant's administrator in charge of more than one aspect of the construction or administration of the project CEI.

**Consultant Senior Project Engineer:** The Consultant's leading engineer assigned to a construction project. In some cases the Senior Project Engineer may oversee more than one construction project.

**Contractual Lapse:** The perceived or verified inability of the Consultant CEI to perform one or more aspects of its contractual obligations in any aspect or phase of the Contract.

**District Construction Engineer:** The engineer so appointed by the District Secretary to hold the title of District Construction Engineer and who serves to manage all District functions pertaining to construction of Department projects managed by either in-house CEI or Consultant CEI personnel.

**District Construction Consultant Manager :** The Department representative working for the District Construction Engineer, who administers the Consultant CEI work program.

**District General Counsel:** The Department attorney working for the District Secretary regarding legal matters of the District.

**Errors and Omissions:** A general term used to describe deficiencies in the performance of Consultant contractual obligations on a project.

#### ~~4.2.5~~4.2.4 **Identification of Errors, Omissions, or Contractual Breaches**~~Lapses~~

##### **(A) Resident Level Responsibilities**

The initial identification of the errors, omissions, or contractual ~~breaches~~lapses is the responsibility of the Construction Project Manager. This is accomplished through routine project and quality assurance (Q.A.) reviews of the Consultant's work product, records, performance grades, and personnel. ~~These R~~reviews should be made on a continual basis and will be documented during the Consultant's quarterly performance evaluation. ~~any findings of the review.~~

#### ~~4.2.6~~Initial Assessment of Responsibility for Errors, Omissions, or Contractual Lapses

##### ~~(A)~~—Resident Level Responsibilities

If the ~~CEI~~ Consultant ~~CEI's contractual performance, work product,~~ staffing, equipment, or contract administration is found unacceptable and not in agreement with Department historical decisions during a Department QA review, the deficiency ~~shall~~should be clearly defined in writing, and the authority (contract section, article, page, etc.) cited. The Construction Project Manager shall prepare appropriate correspondence for the District Construction Engineer's (or his designee) ~~his delegate's~~ signature outlining the deficiency and identifying a reasonable time frame for Consultant corrective action.

If the noted ~~problem~~ dediciencies are directly attributable to the Project Administrator or the inspectors, corrective action shall first be directed in writing to the Consultant Senior Project Engineer, and/or the Consultant Principal-in-Charge, with copies to the District Construction Consultant Manager-, and the District General Counsel.

If no apparent action is taken within 30 days, ~~then these~~ concerns shall be clearly conveyed directly to the Consultant Principal-in-Charge, with a copy to the Consultant Senior Project Engineer, the District Construction Consultant Manager-, and the District General Counsel. If the issues problem are directly attributable to the Consultant Senior Project Engineer, ~~these~~ concerns shall be conveyed to the Consultant Principal-in-Charge

and a copy to the District Construction Consultant Manager ~~and~~ the District General Counsel. During the period of correction, the Consultant's actions and progress shall be closely monitored. The relationship involved here is contractual, and the Department must allow the Consultant sufficient and reasonable time to correct noted deficiencies with their contract performance, as appropriate under the circumstances.

If appropriate/~~adequate~~ action is not taken to correct the deficiencies, the District Construction Engineer (or his designee) ~~legate~~ will direct the Consultant in writing to provide a written responses to the deficiencies addressing, ~~the~~ providing reasons why the ~~issues~~ problem ~~have~~ as not been addressed and a plan outlining ~~a plan and a minimum~~ the time frame within which all issues will be addressed. If the response is acceptable to the Department, corrective actions and a time frame for corrective action shall be approved in writing. Continued monitoring by District staff will be required. A follow-up at the end of the specified correction period will be prepared based on the staff's investigation at that time. A copy of the report should be sent to the District General Counsel, the District Director of Transportation Operations, and the District Professional Service Administrator.

The District Construction Engineer, through his staff and with the advice of the District General Counsel, shall perform a comprehensive review after-the-fact to determine if the Department or the Contractor suffered any damages during this period. If damages were sustained, the recovery of any identified costs and damages shall be in accordance with the procedure for ~~Recovery of Premium Costs from Consultants for Errors, Omissions, and Contractual Breaches~~ Lapses by Professional Engineers, or Substandard Work On Department Contracts, Procedure No. 375-020-010.

#### **4.2.74.2.5 Consultant Contract Termination**

If the ~~Consultant~~ Consultant CEI does not follow through with the corrective action or the action taken is unsuccessful, the District Construction Engineer will summarize the findings, recommend termination, and present these to a committee comprised of the District Secretary, the District Director of Transportation Operations, and the State Construction Engineer or his designee. The Chief Construction Litigation Attorney, or designee, shall be a non-voting legal advisor to the committee. The FHWA shall be given a copy of the written finding from the committee on all Federal Aid projects. If ~~the~~ is committee concurs with the recommendation, the District Construction Engineer shall forward a copy of the finding with a recommendation for execution of a Termination Agreement (or, in the event the Consultant refuses to agree to termination, a unilateral termination) to the District Professional Services Administrator. The contract shall then be terminated for cause. The

District will then be responsible for completing the CEI on the project, either through another Consultant or with in-house personnel.

- (A) If this action is followed through to termination, the District Construction Engineer will need to ensure the following become the possession of the Department:
  - (1) All files, records, and documents given to the Consultant, or kept by the Consultant as part of his contractual obligation;
  - (2) All record books (piling, density log, etc.);
  - (3) All equipment supplied by the Department;
  - (4) All files, records, and documents kept by subconsultants, as well as certification of payment;
  - (5) All personal logs or diaries pertaining to the construction or CEI contracts kept by the Senior Project Engineer, Project Administrator, or Inspectors.
- (B) The District Construction Engineer will immediately notify the construction Contractor that the termination of the Consultant CEI has taken place. The Contractor will then be notified who will be assigned the CEI responsibilities. As soon as possible, the District Construction Engineer shall arrange for a meeting between the Contractor and the newly appointed Resident Engineer or the Senior Project Engineer in case of a Consultant CEI.
- (C) The Construction Project Manager will notify the District Office of Information Systems of the termination. A list of all Consultant personnel associated with the project who have computer access authority will be provided so that the access privileges will be revoked immediately.
- (D) Upon securing the records and reassigning the responsibilities of the construction project management, the District Construction Engineer shall perform a comprehensive investigation of all costs incurred by the Department or its Contractor due to this termination and/or the actions (or inactions) of the Consultant leading up to the termination. This shall include all administrative, construction, or legal costs incurred. If damages were sustained, the recovery of any identified costs and damages shall be in accordance with the procedure for ~~Identifying and Assigning Responsibility for Errors, and~~ Omissions and Contractual

**Breaches by Professional Engineers ~~by Design Consultants~~, Procedure No. 375-020-010.**

- (E) The District Professional Services Administrator will process a final **Consultant CEI Work Performance Evaluation** completed by the Construction Project Manager in accordance with ~~Project and Performance Management Professional Services Consultant Work Performance Evaluation, Procedure No. 375-030-007~~. This information shall be considered in selection of future CEI Consultants throughout the State.